REMARKS/ARGUMENTS

Reconsideration and allowance of this application are respectfully requested.

Currently, claims 1-13, 15-16, 18-26, 29-30 and 32-36 are pending in this application.

Allowable Subject Matter:

Claims 18-22, 29 and 34-35 have been indicated as being allowable.

Rejections Under 35 U.S.C. §103:

Claims 1, 3 and 36 were rejected under 35 U.S.C. §103 as allegedly being

unpatentable over Easki et al (U.S. '547, hereinafter "Easki") in view of Steijer (U.S.

'174). Applicant respectfully traverses this rejection.

In order to establish a *prima facie* case of obviousness, all of the claim limitations

must be taught or suggested by the prior art. Applicant respectfully submits that the

combination of Easki and Steijer fails to teach or suggest distributing a tariff to a

multiplicity of customer terminals connected to a communications network, the tariff

comprising a formula for calculating a charge <u>as a function of a loading of the</u>

<u>communications network</u>, as required by claim 1 and claim 3 which depends therefrom.

The combination also fails to teach or suggest distributing a tariff to a multiplicity of

customer terminals connected to a communications network, the tariff comprising a

variable formula for calculating a charge as a function of a detected congestion level of

the communications network, as required by independent claim 36.

The sentence bridging pages 2-3 of the Office Action admits "Easki is silent on the

tariff comprising a formula for calculating charge as a function of a loading of the

communication network for use by at least one of the customer terminals." Applicant

respectfully submits that Steijer fails to remedy this admitted deficiency of Easki. That

is, Steijer fails to teach or even suggest distributing to customer terminals a tariff

comprising a formula for calculating a charge <u>as a function of a loading of the</u>

<u>communications network</u>. Through this feature, dynamic pricing may be achieved in

which a spot price varies depending on the loading of the communications network. For

example, when the network is congested, the cost of using the network increases to

throttle back demand for the network until the network ceases to be congested. (See page

7, lines 26-31 and page 12, lines 21-29 of the originally-filed specification).

Easki fails to disclose distributing tariffs to customer terminals, let alone

distributing tariffs which comprise a formula for calculating a charge as a function of

network loading. Easki's proposed solution to network congestion is not dynamic

pricing, but rather notifying transmitters of traffic along congested paths in the hope that

they will voluntarily reduce the rate at which they are sending data. There is no reason in

Easki to have a tariff depending on the loading of the network and thus one of ordinary

skill in the art would not have even been motivated to modify Easki to arrive at the

invention of claims 1, 3 and 36.

Accordingly, Applicant respectfully submits that claims 1, 3 and 36 are not

"obvious" over Easki and Steijer, and therefore respectfully requests that the rejection of

these claims under 35 U.S.C. §103 be withdrawn.

Claims 4-10 were rejected under 35 U.S.C. §103 as allegedly being unpatentable over Easki in view of Steijer and further in view of Wulkan et al (WO '749, hereinafter "Wulkan"). Since claims 4-10 depend directly or indirectly from base claim 1, Applicant submits that the comments made above with respect to the combination of Easki and Steijer apply equally to these claims. Wulkan fails to remedy the above described deficiencies of Easki and Steijer. Applicant thus respectfully requests that the rejection of claims 4-10 be withdrawn.

Claims 2, 13-16, 23-26 and 33 were rejected under 35 U.S.C. §103 as allegedly being unpatentable over Easki in view of Steijer and further in view of Saari et al (U.S. '046, hereinafter "Saari"). Applicant respectfully traverses this rejection.[1] Claims 2, 6-7, 10, 13 and 15 depend at least indirectly from claim 1 (discussed above). Applicant submits that Saari fails to remedy the above described deficiencies of Easki and Steijer. For example, Saari fails to disclose tariffs distributed to customer terminals which comprise a formula for calculating a charge as a function of the loading of the communications network. Indeed, Saari discloses all of the charge processing being performed within a network.

Independent claim 16 requires, *inter alia*, a plurality of different tariffs distributed to a respective customer terminal attached to a communications network, one or more of the different tariffs being varied in dependence upon the loading of network resources and the plurality of different tariffs having different respective volatilities. The three-way

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[1] Applicant notes, however, that the rejection of claim 23 is deemed moot since this claim has been canceled.

combination of Easki, Steijer and Saari fails to teach or suggest these claim limitations. In particular, Saari fails to disclose tariffs having different volatilities. Moreover, Steijer fails to teach or suggest varying one or more of the plurality of different tariffs <u>in dependence upon the loading of the network resources</u>.

Independent claim 23 requires, *inter alia*, distributing a tariff to a multiplicity of customer terminals connected to a communications network including communicating separately a formula for calculation of network charges and coefficients for use in the formula. The <u>three</u>-way combination of Easki, Steijer and Saari fails to teach or suggest these claimed features. Saari simply describes numerous occasions that a user's cost will typically depend on parameters which the user is able to choose such as the nominal bit rate and/or a specified priority level for traffic falling within the agreed parameters. The various formulas described by Saari are for calculating a packet's priority level depending on the actual measured bit rate compared to the user's agreed upon and paid for nominal bit rate. Saari and Steijer each fails to teach or suggest tariffs which are distributed with formulas and coefficients distributed to a customer terminal separately.

Independent claim 26 requires, *inter alia*, "a processor connected to the meter and to the store and arranged to calculate using the tariff information and information relating to the measured use by the customer terminal of the network and information relating to the measured state of the network, a network usage charge." The three-way combination of Easki, Steijer and Saari fails to teach or suggest this claimed feature. While Steijer discloses providing tariff information including a current tariff, a future tariff and a time

until a tariff switch will occur, to a mobile communications device, Steijer fails to disclose calculating a network usage charge using tariff information, information relating to the measured use by the customer terminal, and <u>information relating to the measured state of the network</u>.

Accordingly, Applicant submits that the rejection of still pending claims 2, 13, 15-16, 23-26 and 33 under 35 U.S.C. §103 be withdrawn.

Claims 11-12, 30 and 32 were rejected under 35 U.S.C. §103 as allegedly being unpatentable over Easki in view of Steijer and further in view of Okamoto. Applicant respectfully traverses this rejection. Since claims 11-12 and 30 depend at least indirectly from claim 1, all of the comments made with respect to Easki/Steijer apply equally to these claims. Okamoto fails to remedy these deficiencies. Independent claim 32 requires, *inter alia*, "automatically varying, depending on network loading as detected at a customer terminal, a tariff for network usage by a customer terminal, the tariff being distributed to the terminal and comprising a formula for calculating a charge as a function of the loading of the communications network for use by the customer terminal." The three-way combination of Easki, Steijer and Okamoto fails to teach or suggest this claimed feature.

Accordingly, Applicant respectfully submits that claims 11-12, 30 and 32 are not "obvious" over Easki, Steijer and Okamoto and respectfully requests that the rejection of these claims under 35 U.S.C. §103 be withdrawn.
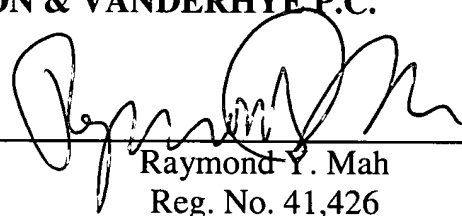
Conclusion:

Applicant believes that this entire application is in condition for allowance and

respectfully requests a notice to this effect. If the Examiner has any questions or believes

that an interview would further prosecution of this application, the Examiner is invited to

telephone the undersigned.

Respectfully submitted,

NIXON & VANDERHYE P.C.

By: _____
Raymond Y. Mah
Reg. No. 41,426

RYM:sl
1100 North Glebe Road, 8th Floor
Arlington, VA 22201-4714
Telephone: (703) 816-4044
Facsimile: (703) 816-4100